

# The latest decision on the Pallant v Morgan equity (Dixon v Willan and others)

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**Property Disputes analysis:** His Honour Judge Cawson QC, in *Dixon v Willan*, gave further guidance on the application of *Pallant v Morgan* equity (after *Pallant v Morgan*) in this case. The court determined that the claimant's claim for a share in the profits and/or a beneficial interest in the land purchased for development should be dismissed so far as the residential properties were concerned. However, in relation to two commercial sites, to the extent that a *Pallant v Morgan* equity arose, the court found that the claim ought to be satisfied by requiring the second defendant to account for 50% of any net profits it had made. Written by Katherine (Kate) Traynor, barrister at Landmark Chambers.

*Dixon v Willan and others* [\[2022\] EWHC 2160 \(Ch\)](#)

## What are the practical implications of this case?

The judgment is a welcome authority on the issue of joint venture agreements in respect of the acquisition of land. Further, the judgment provides a useful summary of the principles of establishing *Pallant v Morgan* equity.

## What was the background?

The claimant, Mr Dixon, and the first defendant, Mr Willan, were both property developers. The second and third defendants, Willan Trading Ltd and JW Houses Ltd, were both companies under the control of Mr Willan and/or his family members.

It was Mr Dixon's case that he and Mr Willan reached an agreement regarding a joint venture involving the purchase and/or development of several pieces of residential and commercial land in Cumbria. Willan Trading Ltd and JW Houses Ltd acquired the sites. Mr Dixon alleged that by way of this agreement and joint venture, he was entitled to a share in the profits made in respect of the purchase and/or development thereof and/or to a beneficial interest in the acquired land. However, the joint venture had not been documented in writing.

The defendants denied that Mr Dixon had any such entitlement, averring, among other things, that any entitlement on behalf of Mr Dixon to share in profits or to an interest in the land was contingent upon him making and/or arranging a financial contribution to the joint venture and/or to the terms of the joint venture being finalised and formalised through a limited company established for those purposes.

So far as the legal analysis of Mr Dixon's case was concerned, it was asserted:

- that a binding agreement was concluded between himself and Mr Willan, with Mr Willan acting so far as necessary as an agent for and on behalf of Willan Trading Ltd and JW Houses Ltd, or at least with their ostensible authority
- as to the effect of [sections 52](#) and [53](#) of the Law of Property Act 1925, and [section 2\(1\)](#) of the Law of Property (Miscellaneous Provisions) Act 1989, it was alleged that the agreement was one of partnership ([section 1](#) of the Partnership Act 1890 ([PA 1890](#))) and that any land acquired pursuant to the alleged agreement is to be properly regarded as property of the relevant partnership ([PA 1890, s 20](#))
- alternatively, the case gave rise to *Pallant v Morgan* [1953] Ch 42 equity, whereby the second and third defendants were to be treated as having acquired the land subject to equity in favour of Mr Dixon, which recognised and gave effect to the interest that had been agreed between Mr Willan and Mr Dixon or in the further alternative, Mr Dixon had a claim for proprietary estoppel and/or unjust enrichment

## What did the court decide?

In determining the merits of the claim, the court considered it necessary to distinguish between the residential and commercial sites.

### Residential sites

The judge held that under [PA 1890, s 1](#), for a partnership to exist, it was not necessary for some actual trading activity to have taken place; rather, steps taken to establish a business may be sufficient. However, given the findings of fact made that Mr Dixon and Mr Willan had yet to decide on how their joint venture would be pursued, he did not consider that any partnership or partnerships could have come into existence prior to July 2017.

The court considered it necessary to examine whether there was, after July 2017, some sufficiently certain binding agreement, expressly or by implication, for the sharing of anticipated profits from the acquisition or development of the sites and/or as to Mr Dixon acquiring an interest in those sites.

The judge considered that Mr Dixon's case was subject to several difficulties, such that in the circumstances, he was unable to conclude that, in the events that unfolded after July 2017, there was an understanding, still less any binding agreement for the sharing of profits and/or Mr Dixon acquiring an interest in the residential sites.

As to the application of *Pallant v Morgan* equity, the court found that Mr Dixon had not established the principle in respect of the residential sites. Specifically, the court found that Mr Dixon would only be entitled to participate if he financially contributed, or procured financing, which he did not.

The difficulty with Mr Dixon's case regarding proprietary estoppel was, again, that Mr Dixon's participation was conditional upon him making a financial contribution or procuring finance. Further, the judge said it was 'impossible to identify a promise or assurance sufficient to support a proprietary estoppel'. Therefore, Mr Dixon was unable to establish a proprietary estoppel claim.

For similar reasons to that above, the court did not consider that Mr Dixon's case as to unjust enrichment was made out.

### Commercial sites

The court made several important distinctions between the residential development sites and the commercial development properties. In short, while the court considered Mr Dixon's participation in any joint venture concerning the residential sites was conditional upon him financially contributing, different considerations applied in the case of the commercial properties.

In respect of the commercial sites, the court was satisfied that there was an understanding and agreement between Mr Dixon and Mr Willan that if the commercial properties were acquired, Mr Dixon would share equally in the profit made, without any requirement for Mr Dixon to contribute financially or procure any funding. While the court was not satisfied that what was agreed between the parties was sufficiently clear or certain to give rise to a binding contract of partnership, or otherwise, it was satisfied that a *Pallant Morgan* equity had arisen.

Unfortunately, despite that finding, there was insufficient material before the court to determine the sums (if any) to be paid. Therefore, the court directed an account or enquiry as to the net profit that was made in consequence of the acquisition of the commercial properties.

### Case details:

- Manchester Civil Justice Centre, sitting in the High Court of Justice (Business and Property Courts)
- Judge: His Honour Judge Cawson QC
- Date of judgment: 26 August 2022

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